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IN THE

Supreme Court of the United States

October Term, 1965.

No. 986

LOUIS FRIED,

Petitioner,

vs.

BROOKLYN BAR ASSOCIATION,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

LOUIS FRIED,
Petitioner, Pro Se,
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Hackensack, N. J.

THE REPORTER COMPANY, INC., New York, N. Y. 10007—RE 2-6978—1966

(5212)

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Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

Your petitioner, Louis Fried, respectfully prays that a writ of certiorari, directed to the Court of Appeals of the State of New York, be issued to review the final order of said Court of Appeals, entered November 24, 1965, affirming an order of the New York Supreme Court, Appellate Division, Second Department, entered May 10, 1965, without opinion, denying petitioner's application for a writ of error *coram nobis* to declare null and void an order made by the said Appellate Division on January 10, 1936, during petitioner's imprisonment, for his automatic disbarment, in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

The affirmance by the Court of Appeals was also without opinion.

Petitioner moved the Court of Appeals to amend the remittitur, which it did, by adding thereto the following:

"Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Appellant contended that he was denied due process of law in violation of his rights under the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals held that there was no denial of any of the appellant's constitutional rights."

Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked herein under Title 28, Section 1257(3), U.S.C., and upon the amended remittitur of the Court of Appeals dated January 6, 1966, which states that a question under the Constitution of the United States was raised by petitioner and necessarily passed upon by the Court.

Question Presented.

Whether denial by the Appellate Division and the Court of Appeals of petitioner's application for the writ of error *coram nobis* as to the order made January 10, 1936, for his automatic disbarment, which was effected without charges and a hearing thereon with confrontation and cross examination of accusing witnesses, deprived petitioner of the property right in his license to practice law, in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, on the ground that it was made in error under then Section 88(3) of the New York Judiciary Law, which limited jurisdiction in the Appellate Division so to do, exclusively as to attorneys convicted of a "felony," whereas (as has been conceded by the respondent herein and decisions of the New York Court of Appeals) petitioner was never convicted of a felony within the meaning of aforesaid Section 88(3).

Reports Below.

The case in the Appellate Division of the New York Supreme Court, Second Department, is reported in 23 A. D. 2d 863, without opinion.

The decision of the New York Court of Appeals is reported in 16 N. Y. 2d 1014, without opinion.

Statement.

Petitioner is a citizen of the United States by reason of birth at New York, New York, on August 9, 1895. After about two years service during WW I in the U. S. Army, he was honorably discharged in January, 1919, as Sergeant First Class, Engineer Corps. He then completed his law study at and received his LLB degree from Georgetown University, Washington, D. C., in June, 1921. By profession he was a lawyer, having been admitted to the Bars of the Supreme Court and the Court of Appeals of the District of Columbia in October, 1921; the Supreme Court of the United States in March, 1926; and the Supreme Court of the State of New York in December, 1927.

In August, 1925, after practicing law in Washington, D. C., since 1921, he was appointed in the Federal Civil Service as United States Naturalization Examiner at New York City, serving in that position until he resigned with honor, in September, 1932, to engage in law practice at Brooklyn, N. Y.

In November, 1935, upon his plea of "not guilty," he was convicted in the U. S. District Court, Eastern District of New York, of an alleged violation of 8 U.S.C. 414, which denominated it as a federal felony to assist a person not entitled thereto to apply for a declaration of intention to become a citizen. The sentence was three years, but this was later vacated and a sentence of 47 days substituted.

Upon written confessions of the prosecuting witnesses to the prosecutor, admitting that petitioner's conviction resulted from their perjured testimony, petitioner received a "full and unconditional" Presidential pardon. In 1941, upon an investigation of the evidence of his wrongful conviction as aforesaid, he was reinstated in the Federal Civil Service and was assigned to the U. S. Veterans Administration, where he held the legal position of adjudicator of veterans' claims, until his retirement in 1959, with honor and distinction, at age 63.

The jurisdiction of the Appellate Division of the New York Supreme Court, to automatically disbar an attorney without charges, a hearing thereon and confrontation and cross examination of accusing witnesses, is, by statute, limited exclusively as to attorneys convicted of a felony, within the meaning of the statute (Judiciary Law, Section 90[4], formerly Section 88 [3]). Petitioner was never so convicted.

Upon petitioner's aforesaid federal conviction (which is not a felony under New York law, as will be seen herein), the respondent, in December, 1935, moved the Appellate Division for petitioner's automatic disbarment, in error as for a "felony" under New York law, without charges and a hearing thereon before the Appellate Division, as required by statute as to non-felony convictions. This error the respondent later admitted in its memorandum dated September 8, 1959, the pertinent portion of which reads:

> "* * * The original charges against Fried have never been heard by the Appellate Division * * * the fact that the motion papers (not charges) were served on him while he was in prison, plus the fact that when they were served it was generally thought that conviction of a federal felony automatically resulted in disbarment, may have made his opportunity to be heard more theoretical than real * * *

particularly in view of his claimed innocence, the recantations of the prosecution witnesses, his pardon, his reinstatement (*sic* in the Federal Civil Service) * * * It would seem just that Fried have his day in court."

As to the verity of petitioner's "not guilty" plea, this was established by written confessions of the prosecuting witnesses given to the prosecutor as aforesaid, and thereafter attested to by the respondent in 1961, at the only hearing ever had in the case upon any other of petitioner's reinstatement applications. This only hearing, however, it must be emphasized, was without accord to petitioner of confrontation and cross examination of any accusing witnesses. Significantly though, upon this application in 1961, the respondent recommended petitioner's reinstatement to the bar, which however, the Appellate Division denied, in spite of the respondent's strong urging to do so, in these words:

"* * * It would seem from the retractions and from the presidential pardon, coupled with the thorough investigation incidental to any pardon, that this petitioner was convicted on perjured testimony and never did commit the crime for which he was ultimately disbarred. * * * His behavior from the time he was released from prison fortified his true character—going to work for W.P.A., and then for a bank, and then back into the Federal Civil Service until he reached the age of retirement. His behavior during the war * * * the excellent character testimony adduced on his behalf by the men who worked with him or knew him socially, all individuals of the highest quality—serve as a glowing tribute to the high type of character the petitioner possesses. * * * Moreover, petitioner was revered by the men who worked with him and under him in administering the affairs of the Veterans Bureau. Some of the character witnesses who worked with him for many years bespoke Fried's goodness with emotion which cannot be gleaned from the printed word. In view of

> the foregoing, it is respectfully submitted that petitioner has demonstrated a degree of fitness which strongly recommends itself to a favorable finding for his reinstatement to the bar."

Now, as will appear below, the crime of which petitioner was convicted, even if he were guilty thereof, was not at all cognizable as a "felony" under New York law. In this circumstance, the New York Courts have repeatedly held that aforesaid Section 88(3), Judiciary Law, had no application whatever, and therefore, automatic disbarment was not authorized thereunder. (*Matter of Donegan,* 282 N. Y. 285; *Matter of Koven,* 282 N. Y. 646; *Matter of Ackerson,* 289 N. Y. 844; *Garsson v. Wallin,* aff'd 304 N. Y. 702.)

In the leading case of *Donegan, supra,* the Court of Appeals stated:

> "* * * in 1933, applicant was convicted in the U. S. District Court * * * of the crime of consiracy to use the mails to defraud. * * * pardon has been denied by the President * * * Under the laws of New York, however, * * * conspiracy to commit a crime is only a misdemeanor * * * the Appellate Division has stricken the name of appellant from the roll of attorneys * * * without further hearing, upon the ground that it is so constrained to do by subdivision 3 of Section 88 of the Judiciary Law * * * We are not concerned with the merits. The question presented is solely whether the term 'felony' as employed in the above sections of the Judiciary Law, providing for summary, permanent disbarment, includes an offense defined as a felony by Federal statute, which, if cognizable under the laws of New York, would at most be a misdemeanor * * * Hence the statute must be interpreted in the light of the fundamental canon that penal statutes must be strictly construed. * * * Strict construction of Section 88(3) and Section 477 of the Judiciary Law requires that the term 'felony' include only those Federal fel-

onies which are also felonies under the laws of this state, and exclude such Federal felonies as are 'cognizable by our laws as a misdemeanor or not at all.' * * * The order of the Appellate Division should be reversed."

Since his disbarment, petitioner has made about five reinstatement applications. All these, however, were based exclusively upon his pardon and continuous excellent character since 1935, and not upon the Constitutional question raised by him for the first time in the application for the *coram nobis* writ, which is the subject of this appeal. Said applications, therefore, did not constitute a waiver of any Constitutional rights asserted herein; nor did his failure to appeal the jurisdictionally null and void order of January 10, 1936, lend it any validity at any time; nor did it waive his entitlement to the writ of error *coram nobis* as to said admittedly null and void order, as the following authorities clearly hold:

People v. Richetti, 302 N. Y. 290:

"* * * Fundamental concepts of due process, decisions of the United States Supreme Court and of our Court, and the very nature of the *coram nobis* type of relief—all demand trial of such sworn assertions * * *. Defendant has been denied his day in court, and we must see that he has it, be he right or wrong, truthful or lying, good citizen or bad * * * there is no time limit on such applications."

People v. McCullough, 300 N. Y. 107:

"* * * A motion in the nature of a writ of error *coram nobis* is the proper remedy in this state to set aside a judgment obtained in violation of such constitutional right."

Bojinoff v. People, 299 N. Y. 145:

"* * * This does not prevent us from holding as a matter of state law that the defendant may at any time by writ of *coram nobis,* attack the validity of

a judgment of conviction that has been obtained contrary to statute and in violation of the protection afforded by the State and Federal Constitutions."

Hughes v. Cuming, 165 N. Y. 91:

"* * * one is not bound to appeal from a void order or judgment, but may resist it and assert its invalidity at all times. '*Kamp v. Kamp,*' 59 N. Y. 212."

Corpus Juris Secundum, Vol. 49, Section 451, page 882:

"* * * the validity of a judgment is to be determined as of the date of its rendition, and if void then, it remains so forever."

Confrontation.

The invalidity of the order for petitioner's automatic disbarment, because made in violation of the Due Process Clause of the Constitution as aforesaid, is best exemplified in the decision rendered by the Supreme Court of the United States in *Willner v. Committee on Character and Fitness,* 373 U. S. 96, wherein the Court stated, at pages 102, 103:

"* * * the requirements of procedural due process must be met before a state can exclude a person from practicing law. * * * We are not here concerned with grounds which justify denial of a license to practice law, but only with what procedural process requires if the license is to be withheld. * * * We have emphasized in recent years that procedural due process often requires confrontation and cross examination of those whose word deprives a person of his livelihood."

Significantly, the Appellate Division's denial of petitioner's *coram nobis* writ, was without opinion. In refraining from an opinion, it conceded, inferentially at least, that petitioner's conviction was not a felony within

the meaning of said statute (Section 88[3], Judiciary Law). If it believed otherwise, it would have indicated so in an opinion stating that the question of the "federal felony" as involved in the legally controlling *Donegan* case, *supra,* was not parallel to the "federal felony" in petitioner's case. But of course, had it done so, it would have been in error and totally contradictory of the law established in the *Donegan* and companion cases cited herein. Likewise, the foregoing holds true for the denial, without opinion, by the Court of Appeals, which affirmed the Appellate Division. It can only be surmised that both courts failed to signify a reason for their respective denials of the *coram nobis* writ, because they believed that other "merits" in the case justified such denial. Any other "merits," of course, were of no consequence and superceded by the prevailing law, as the Court of Appeals clearly stated in the *Donegan* case, in these words:

> "We are not concerned with the merits"

and as the Supreme Court of the United States clearly stated in the *Willner* case, in these words:

> "We are not here concerned with the grounds which justify denial of a license to practice law."

Conclusion.

During petitioner's helpless imprisonment for a crime which he never committed, he was automatically and illegally disbarred as aforesaid, while as the respondent itself has admitted

> "his opportunity to be heard was more theoretical than real."

The economic disadvantage for adequate employment by reason of his unjust conviction did not ease petitioner's burden in his efforts at exoneration, while at the same time struggling to provide the necessities for his wife,

two children and self. However, with the aid of his wife, who then obtained employment herself, they together were able to send their children to college, marry off their daughter and have their son become a surgeon dentist. With all this, petitioner, in what spare time he had during employment, obtained confessions from his prosecuting witnesses, a full and unconditional presidential pardon, and his reinstatement in the Federal Civil Service. And now, he still continues his fight in this, the last step in his total exoneration, which in some measure can mitigate against the indignity suffered by his family and self for over a quarter of a century by his wrongful conviction, imprisonment and disbarment. Accordingly, he prays this Court's kind consideration of this application for certiorari.

It is respectfully submitted that the writ of certiorari to the Court of Appeals of the State of New York should be granted.

Dated, January 28, 1966.

Respectfully submitted,

LOUIS FRIED,
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vs.

BROOKLYN BAR ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S BRIEF

Statement

Petitioner, Louis Fried, petitions for a Writ of Certiorari, directed to the Court of Appeals of the State of New York, to review a final order of the Court of Appeals, entered November 24, 1965, affirming an order of the New York Supreme Court, Appellate Division, Second Department, entered May 10, 1965, without opinion, denying petitioner's application for a writ of error coram nobis to declare null and void an order made by the said Appellate Division on January 10, 1936, during petitioner's imprisonment, disbarring him by operation of law, on the ground that it was in violation of the due process clauses of the State and United States constitutions.

History

Petitioner Louis Fried, was admitted to the Bar of the State of New York by the Appellate Division of the Supreme Court, Second Department in December, 1927.

In 1935 he was convicted in the United States District Court for the Eastern District of New York of the crime of violating section 414, title 8 of the United States Code, a felony.

Charges were served upon the petitioner by the Brooklyn Bar Association and upon his default and failure to answer said charges an order was entered for his disbarment in January, 1936 (246 App. Div. 817, 284 N.Y.S. 836).

A presidential pardon was granted to Mr. Fried in October, 1945.

Subsequently, Mr. Fried applied to the Appellate Division for reinstatement, on January 9th, 1950, June 18th, 1951 (withdrawn) and March 24th, 1952. In 1959 the Appellate Division referred another application to Hon. George A. Arkwright, Official Referee. A full hearing was conducted and in his report the Official Referee recommended that the application be denied, stating:

> "If one were to accept, face value, the petitioner's version of the alleged perjury committed in the trial which petitioner avers resulted in his conviction, or to accept the presidential pardon, as expunging any need for this court's consideration of any of his acts which resulted in his disbarment, we are still confronted with the following: a) In order to secure a reduction of his own sentence, petitioner falsely implicated Weinberger in an alleged crime of which Weinberger was innocent. b) He brazenly deceived and tricked Judge Galston into reducing his sentence by false statements. c) After giving the special U. S. assistant attorney a statement, he testified otherwise at the hearing of the Association of the Bar.
>
> I am unimpressed by the petitioner's claim of duress and mental stress when he involved Weinberger. There is no supporting testimony of this contention. Petitioner tried to save himself but callously involved Weinberger, irrespective of what might happen to the latter, his reputation, his license to practice law,

or his family." (Petitioner referred to above is the petitioner herein.)

On the basis of Referee Arkwright's report the Court denied the application for reinstatement (14 App. Div. 2d 920).

Mr. Fried's subsequent applications to the Appellate Division were denied on March 26th, 1962, November 26th, 1963, May 26th, 1964 and on May 10th, 1965, the latter being the basis of the current appeal.

POINT I

No construction of either the State or United States constitutions is involved in this appeal.

Mr. Fried claims that there is a violation of the due process clauses of the State and United States constitutions by the order of disbarment of the Appellate Division.

Pursuant to the Judiciary Law, Mr. Fried was served with a copy of the charges which called for his disbarment. He defaulted or otherwise failed to answer the charges. Because of his default the order to disbar him was entered.

246 App. Div. 817, Jan. 1936, 284 N.Y.S. 836.

Thereafter, Mr. Fried applied for reinstatement and in 1959 the matter was referred by the Appellate Division to Hon. George A. Arkwright, Official Referee.

Mr. Fried and witnesses testified at a full hearing. He was permitted wide latitude in the presentation of his case.

Based on the report of the Official Referee, the Appellate Division confirmed the report which recommended that Mr. Fried's application for reinstatement be denied.

14 App. Div. (2d) 920, Nov. 1961.

Since Mr. Fried did receive or had knowledge of the charges made against him and since he did have a full hearing on the matter there was no violation of the due process clauses of either the State or United States constitutions.

POINT II

The Judiciary Law of the State of New York authorizes the Appellate Division of the New York State Supreme Court to disbar an attorney on grounds other than conviction of a felony under New York law.

Paragraph "2" of Section 90 of the Judiciary Law of the State of New York authorizes the Appellate Division of the New York Supreme Court to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor or any conduct prejudicial to the administration of justice.

Although the charges against Mr. Fried were based primarily on his conviction in the United States District Court for the Eastern District they were broad enough to cover any phase pursuant to the Judiciary Law. Mr. Fried did nothing to deny the charges and because of his default the *prima facie* case was presented for his disbarment.

The power of the Appellate Division to discipline an attorney is not limited to cases where his act was technically criminal and he may be punished for unprofessional conduct showing a lack of due appreciation of the rules of ethics by which his conduct should be regulated.

Matter of Chadsey, 141 App. Div. 458, 126 N.Y.S. 456, aff'd without opinion 201 N. Y. 572.

POINT III

Petitioner had his day in court when he submitted himself to the jurisdiction of the Appellate Division of the Supreme Court in proceedings subsequent to the disbarment on his own application for reinstatement to the office of attorney.

Paragraph "4" of Section 90 of the Judiciary Law reads in part, as follows:

> Any person being an attorney and counsellor-at-law who shall be convicted of a felony, shall, upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

Paragraph "5" of Section 90 of the Judiciary Law follows:

> Upon a reversal of the conviction for felony of an attorney and counsellor-at-law or pardon by the president of the United States or governor of this State, the Appellate Division shall have power to vacate or modify such order or debarment.

After Mr. Fried was pardoned by the president of the United States he applied to the Appellate Division for reinstatement.

The Appellate Division referred the matter to Hon. George A. Arkwright, Official Referee.

Mr. Fried submitted himself to the jurisdiction of the Appellate Division when he applied for relief and then attended a full hearing of his application. Mr. Fried had his day in Court.

CONCLUSION

The writ should be denied.

Respectfully submitted,

BENJAMIN R. RAPHAEL,
Attorney for Respondent.

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REPLY TO RESPONDENT'S OPPOSITION BRIEF

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REPLY TO RESPONDENT'S OPPOSITION BRIEF

The respondent (Brooklyn Bar Association), in its opposition brief herein, represents as being true, a material fact of the case which it knows, or certainly ought to know, is not true at all.

Respondent, being a Bar Association and an agent of the Court, is chargeable with the highest degree of honesty, integrity and ethics when presenting the facts and law of a case. It is likewise chargeable in all matters pertaining to the legal profession. Therefore, any misrepresentation or withholding of a material fact or law in a case, intentionally or otherwise, is particularly reprehensible.

Petitioner points out herein some material facts and law misrepresented by the respondent in its said opposition brief.

On page 2, second paragraph, respondent alleges:

> "*Charges were served upon the petitioner* by the Brooklyn Bar Association and upon his default and

failure to answer *said charges* an order was entered for his disbarment in January, 1936 . . .'' (Italics supplied by petitioner)

The true fact, however, is: Charges were *never* served upon petitioner, either *before* the disbarment order of January, 1936 was entered, or at any time thereafter to the present day. And the fact that charges were *not* served is a crucial factor of the appeal herein.

As to this, the truth of petitioner's contention is established as follows:

1) The certified transcript of the record herein (a schedule of which was duly furnished to respondent) fails to show the existence of any such charges.

2) Since they are not part of the certified transcript, if such charges are of record elsewhere, it was incumbent upon the respondent to submit a copy thereof for inclusion in the certified transcript. *It could not do so because they never existed.*

3) Had such charges in fact been served on petitioner as alleged, certainly a copy thereof would have been quoted in its opposition brief. *It did not do so because they never existed.*

4) As respondent well knows, petitioner's disbarment was effected *automatically* under the erroneous belief that he was convicted of a felony, and that as to a felony conviction the New York Judiciary Law requires neither charges nor a hearing thereon. Furthermore, it is of record that respondent's very own Counsel, who previously investigated and prosecuted this case, stated for the record as follows:

> ''As a result of such conviction, *he was automatically disbarred, since it was believed at that time that no hearing was necessary''.*

In view of the foregoing several items of evidence in the case, all available to the respondent, it becomes difficult to believe that its representation that "charges were served upon the petitioner", is not a deliberate attempt to mislead the honorable Supreme Court of the United States. Such attempt by a Bar Association would make it the more culpable and censurable.

And, if further proof is needed to show that such charges never were served upon petitioner, it should be evident from the respondent's very opposition brief itself, first paragraph at top of page 4 thereof, which states:

> "Since Mr. Fried did receive *or had knowledge of the charges made against him . . .*" (Italics furnished by petitioner)

Why *"or had knowledge of the charges"*. Certainly this is an admission or implication that respondent itself doubts that charges were in fact served upon petitioner. And certainly, it ought to know that merely *"having knowledge of charges"* is not at all a compliance with the statute, (Judiciary Law Sec. 90(6), formerly Sec. 88(2)), which clearly mandates that—

> "* * * a copy of the charges must be delivered to him personally * * * and he must be allowed an opportunity of being heard in his defense."

It cannot be emphasized too strongly that the disbarment order of January, 1936 (now Exhibit "B", pages 13 and 14, certified transcript herein) is based solely and exclusively upon a petition (now Exhibit "A", pages 10, 11 and 12, certified transcript herein) made by the respondent and addressed to the Appellate Division, and *not charges addressed* to the petitioner. Said petition merely recites that conviction was had upon a federal "felony" (later established not to be a felony under New York law) and thereupon requests the Appellate Division "for such ac-

tion in respect of Louis Fried as is contemplated by law", namely, to grant an automatic disbarment order (Exhibit "B" aforesaid) which the Appellate Division did, *without charges having been served and a hearing thereon,* erroneously as for a "felony".

But the main burden of respondent's opposition brief seems to be its quotation on page 2, paragraph 4 thereof, which is taken from the hearing report of Referee Arkwright upon petitioner's own reinstatement application heard in 1961 (and not upon the disbarment order of January, 1936). This quotation shows that the reason for denial of the application heard in 1961 relates to one Weinberger and Judge Galston. But on this matter, similar to its misrepresentation of fact that "charges were served on petitioner", the respondent again attempts to mislead the Supreme Court of the United States, by taking said Weinberger and Judge Galston matter out of context, without revealing the important companion fact of record, that Weinberger and Judge Galston both *supported* petitioner's said reinstatement application of 1961, as their following respective written statements, which were accepted in evidence by Referee Arkwright, show:
(from Mr. Weinberger's sworn affidavit of Dec. 12, 1949, accepted in evidence by Referee Arkwright as sub-exhibit 9 of Exhibit 3)—

> "* * * Yet, not only do I not oppose his application but I strongly urge its approval, because, as I shall point out, the facts indicate his unqualified worthiness, and his timely repudiation of his said statements against me should reflect to his commendation and credit. In coming forward before I was harmed through such statements and acknowledging the duress and coercion under which they were made, rather than follow the easier course of standing by the coerced statements, thereby to assist his eventual reinstatement appli-

cation, Mr. Fried did the nobler thing and proved exemplary courage in electing the more difficult but manly task of not allowing one to remain unjustly accused, for which our legal profession should be justly proud, and for which, surely, Mr. Fried should not be punished."

(from Judge Galston's letter dated March 5, 1948, accepted in evidence by Referee Arkwright as sub-exhibit 11 of Exhibit 3)—

"* * * Thereafter and on July 30, 1936, a motion for modification of the sentence by reducing it to 47 days was granted by me. * * * 13 years have now elapsed since the trial. If the New York Bar Association is convinced on the basis of the evidence submitted or their own investigation that Mr. Fried has effected his rehabilitation, and that his moral character, honesty and ability during this period are definitely established, I would not oppose his reinstatement . . ."

And in Judge Galston's letter there is not the slightest suggestion that at any time during the 13 years since his reduction of the sentence, was he informed that he was "deceived and tricked" by petitioner. If so, he certainly would have said so in this letter.

Further still, respondent's present Counsel also fails to apprise this Court that its previous Counsel, for about 2 years before the hearing, fully investigated and conducted the case in behalf of respondent before Referee Arkwright, and had resolved *in petitioner's* favor the identical Weinberger and Judge Galston incident, by stating to Referee Arkwright, at conclusion of the hearing, as follows:

"* * * Whether or not a man is unfit because of any single fall from grace, to be restored to the privilege of practicing law, has been greatly discussed and written about. The redeeming feature about petitioner's

refusal to commit perjury against Weinberger is that he did not know at the time that his reduction in sentence would not be disturbed (by Judge Galston). His refusal to commit perjury, in his mind at least, meant that he had to go back to jail. * * * Here, however, when we see the circumstances of a man who knew he was innocent, branded as a convict for something he never did and fearful that his wife would do away with herself and children, such circumstances are of so unusual a nature as to prompt even an upright person to fall from grace. The true mark of fitness, however, was established when that person chose not to testify falsely, as petitioner did in this case. * * * It is respectfully submitted that petitioner has demonstrated a degree of fitness which strongly recommends itself to a favorable finding for his reinstatement to the bar."

Is it not amazing then, that without giving the slightest explanation or comment as to why, in its opposition brief, the respondent now completely reverses the above conclusions of its own previous Counsel, Edward H. Levine, Esquire who, from 1959 to 1961 actually investigated, prepared and conducted the case in respondent's behalf before Referee Arkwright? Certainly this Court is entitled to know such reason, if any. Since it gives no reason, one wonders whether it intends thereby to impugn and impeach the honesty, integrity and ability of its own said Counsel who, up to the time of his death several months ago, enjoyed the finest and most enviable reputation in the legal profession for over three decades.

It should also be noted that respondent's opposition brief labors upon so-called "merits" as basis for denial of the application, rather than the controlling applicable law of the case, i.e., the *Matter of Donegan*, 282 N. Y. 285, followed again in *Matter of Koven*, 282 N. Y. 646, and *Matter*

of Ackerson, 289 N. Y. 844. In the *Donegan* case, *Ibid.*, the New York Court of Appeals stated:

> "* * * We are not concerned with the merits. The question presented is solely whether the term 'felony' as employed in the above sections of the Judiciary Law, providing for summary, permanent disbarment, includes an offense defined as a felony by Federal statute, which, if cognizable under the laws of New York, would at most be a misdemeanor . . ."

And, as the Supreme Court of the United States stated in *Willner* v. *Committee on Character and Fitness,* 373 U. S. 96:

> "* * * the requirements of procedural due process must be met before a state can exclude a person from practicing law. * * * We are not concerned with the grounds which justify denial of a license to practice law, but only with what procedural due process requires if a license is to be withheld."

And, as the New York Court of Appeals stated in *Matter of Eldridge,* 82 N. Y. 161:

> "* * * To say that when he denies the charges brought against him he may be tried without the rights and safeguards which belong to the humblest criminal, would be to adopt a dangerous rule, and one without reason and justification. The question is important and it is best that we decide it. * * * And on that trial the accused is not to be buried under affidavits or swamped with hearsay, but is entitled to confront the witnesses, and to invoke the protection of wise and settled rules of evidence. In adopting this conclusion we only secure to members of the bar the common rights and ordinary privileges of a citizen."

And, as Chief Justice Cardozo of the New York Court of Appeals stated in *People ex rel. Karlin* v. *Culkin,* 248 N. Y. 468:

> "* * * True, indeed, it is that disbarment may not be ordered without specific charges."

The opposition brief advances three POINTS which, petitioner respectfully submits, are without pertinence and unsupported by legal authority.

For example, under "POINT I", it is alleged that petitioner *"defaulted or otherwise failed to answer the charges".* Nothing could be further from the truth, since, as established herein, *charges were never served upon petitioner.*

Under "POINT II" it is alleged:

> "The power of the Appellate Division to discipline an attorney is not limited to cases where his act was technically criminal and he may be punished for unprofessional conduct showing lack of due appreciation of the rules of ethics by which conduct should be regulated."

However, respondent completely ignores the all important fact that as to such unprofessional conduct, *before* disciplinary action may be taken, it is absolutely necessary that charges be served (Judiciary Law Sec. 90(6), formerly Sec. 88(2)) with hearing and rights of confrontation and cross-examination of accusing witnesses, neither of which were ever accorded in regard to said disbarment order of January, 1936,—*which is the controlling issue of this appeal.*

Then, under "POINT III" it is alleged:

> "Mr. Fried submitted himself to the jurisdiction of the Appellate Division when he applied for relief and then attended a full hearing of his application. Mr. Fried had his day in Court."

Without intending to be facetious, and with apologies for using the common vernacular, the answer to this allegation is—so what? Of course, as to said application, how else, except by submitting to the court's jurisdiction could such application be made? But the fact remains that such application heard in 1961 did not and could not validate the null and void order of January, 1936, or constitute any waiver of the jurisdictional and Constitutional defects thereof. *Corpus Juris Secundum,* Vol. 49, Sec. 451, page 882, states:

> "* * * It has been held that the validity of a judgment is to be determined as of the date of its rendition, and, if void then, it remains so forever; it is not validated and made operative * * * by subsequent proceedings based on the judgment, by afterward supplying the elements which were lacking to its validity."

In *People* v. *Hart,* 133 N.Y.S. 2d 98, the Court stated:

> "* * * A court's judgment is void if it is in excess of the power granted to it by a particular statute, although it has jurisdiction over the parties in the matter before it and has the power to act in such matter. * * * the defendant having no power to waive the question of jurisdiction, the motion must be granted."

Finally, as to respondent's aforesaid assertion under "POINT III", namely, "*and then attended a full hearing of his application*". Here again, respondent attempts to create the false impression that at said 1961 hearing, respondent had produced accusing witnesses for confrontation and cross-examination by petitioner. In truth and fact, however, not only did respondent fail to produce a single such witness, but also, did not produce a single other witness to refute or oppose any of petitioner's allegations in said application. The witnesses who appeared at said 1961 hearing were all petitioner's own witnesses. Thus the reinstatement application remained entirely unchallenged and unopposed by the respondent, and terminated with re-

spondent's own strong urging upon Referee Arkwright to grant reinstatement. Nevertheless, Referee Arkwright ignored such urging, most probably for the reason already indicated by petitioner at bottom of page 20 and top of page 21 of the "Memorandum in Support of Motion dated March 29, 1965", now part of the certified transcript herein. And as to the witnesses who supported said application, the respondent's own Counsel then stated to the Referee:

> "* * * the excellent character testimony adduced on his behalf by the men who worked with him or knew him socially, all individuals of the highest quality—serve as a glowing tribute to the high type of character the petitioner possesses. * * * Some of the character witnesses who worked with him for many years bespoke Fried's goodness with emotion which cannot be gleaned from the printed word." etc.

Among these witnesses, eight were members of the bar, one a high government official of the Veterans Administration, one a former editor of Judge Magazine, one a president of a New York advertising agency, one a U. S. District Court Judge (Hon. Leo F. Rayfiel), and a Chief psychiatrist of the Veterans Administration.

Conclusion

Petitioner respectfully submits that, in justice and fairness of the situation as appears herein, the writ of certiorari applied for should be granted, which if granted, could in no wise prejudice the respondent's opportunity at a hearing before the entire body of the Supreme Court of the United States to gainsay or refute any of petitioner's assertions herein.

Dated, March 1, 1966.

Respectfully submitted,

LOUIS FRIED,
Petitioner, *Pro Se*,
280 Prospect Avenue,
Hackensack, New Jersey.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 986

LOUIS FRIED,

Petitioner,

vs.

BROOKLYN BAR ASSOCIATION,

Respondent.

PETITION FOR REHEARING UNDER RULE 58(2)

LOUIS FRIED,
Petitioner, pro se,
280 Prospect Avenue,
Hackensack, New Jersey.

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PETITION FOR REHEARING UNDER RULE 58(2)

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This petition for a rehearing of the Petition for a Writ of Certiorari which was denied by this Court March 21, 1966, is made pursuant to Rule 58(2) of the Rules of this Court.

It is respectfully submitted that the herein not previously cited authorities are of such substantial and controlling effect as to warrant the rehearing, especially when considered in the light of the following summary of law and facts of the case:

1) Petitioner's conviction in the United States District Court was a non-felony under New York law. The January, 1936 automatic Order for his disbarment upon said conviction, was admittedly issued in error as for a "felony" pursuant to New York law; and there was no compliance with the New York statute that *before* disbarment is

effected as to a non-felony conviction, charges and a hearing thereon must first be had. (See lines 28-35, p. 4 of Petition for Writ of Certiorari herein dated January 28, 1966.) The January, 1936 Order was issued without the requisite charges and hearing thereon, without confrontation and cross-examination of accusing witnesses, and without a single word of testimony taken in the *State Court before it issued said Order.* Furthermore, it was issued solely on an "information and belief" petition by the Respondent herein, to which it merely attached a certified copy of the judgment of petitioner's conviction in the *United States District Court.* (See certified transcript of "Record on Appeal" herein, Exhibit "A", pp. 10, 11, 12.)

2) The Respondent herein also has conceded, and the controlling decisions of the New York Court of Appeals have clearly established, that petitioner's conviction in the United States District Court was *not* a felony within the meaning of New York Judiciary Law, Section 88(3), under which the January, 1936 disbarment Order was issued. (*Matter of Donegan,* 282 N. Y. 285; *Matter of Ackerson,* 289 N. Y. 844; *Garsson* v. *Wallin,* aff'd 304 N. Y. 702.)

Accordingly, the January, 1936 automatic disbarment Order as for a "felony" conviction, was *jurisdictionally* null and void from its inception, and remained so forever afterward (*Corpus Juris Secundum,* Vol. 49, Sec. 451 p. 882; *People* v. *Hart,* 133 N.Y.S. 2d 98); it is unnecessary to appeal a jurisdictionally void Order (*Hughes* v. *Cuming,* 165 N. Y. 91; *Kamp* v. *Kamp,* 59 N. Y. 212); it can be assailed as invalid whenever offered, and its later affirmance on review in an Appellate Court, adds nothing to its validity (*Freeman on Judgments, 5th Ed.,* pp. 643-645); being jurisdictionally void, there is no time limit for vacating it (*Wheelock* v. *Wheelock* (N. Y.), 2 A. D. 2d 25; *Brown* v. *Brown* (N. Y.), 275 A. D. 1068); being void, the Order may be totally disregarded (*Carmody-Wait Cyclopedia of New York Practice,* Vol. 1, Sec. 137, pp.

724-725); any and all *subsequent* proceedings in the case, i.e., petitioner's independent applications for reinstatement of 1950 and thereafter, *even though under the same State court's jurisdiction,* could not validate the void Order (*People* v. *Hart, supra*); said reinstatement applications did not constitute a waiver of the jurisdictionally void Order. (*Sampson* v. *Cole* (N. Y.), 265 A. D. 259; *Blandin* v. *Ostrander* (N. Y.), 239 Fed. 700.)

Now, the additional authorities above referred to, are as follows:

1) In *Matter of Abraham A. Joseph* (N. Y.), 125 A. D. 544, the syllabus states:

> "On an application to disbar an attorney, he is entitled as a matter of right *to an independent investigation by the State courts,* and he can only be disbarred upon evidence good at common law, delivered if he chooses, *in his presence and by witnesses subject to cross-examination—the court cannot act upon testimony taken in the United States courts in a similar proceeding.*" (Italics supplied by petitioner.)
>
> NOTE: Aforesaid Exhibit "A", pp. 10, 11, 12 of the certified transcript herein, clearly shows that petitioner's disbarment Order was issued by the *State court* solely upon the aforesaid judgment of conviction in the *United States court,* and not upon a single word of testimony, confrontation and cross-examination of accusing witnesses in the State court before it issued said disbarment Order of January, 1936.

2) The syllabus in *Greene* v. *McElroy,* 360 U. S. 474, states:

> "(d) In this area of questionable constitutionality, this Court will not hold that a person may be deprived of the right to follow his chosen profession *without full hearings where accusers may be confronted and cross-examined.*" (Italics supplied by petitioner.)

3) *In re: Oliver,* 333 U. S. 257, at p. 273, the Honorable Mr. Justice Black, who delivered the Court's opinion, stated:

> "* * * a person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; *and these rights include, as a minimum, a right to examine the witnesses against him.*" (Italics supplied by petitioner.)

4) The syllabus in *Schware* v. *Board of Bar Examiners,* 353 U. S. 232, states:

> "(h) The use of aliases, the arrests and former membership in the Communist party do not in combination warrant exclusion of petitioner from the practice of law.
>
> (i) In the light of petitioner's forceful showing of good moral character, the evidence upon which the State relies cannot be said to raise substantial doubts as to his present good moral character."

And, at pp. 239-240, the Court stated: "There is nothing in the record which suggests that Schware has engaged in any conduct *during the past 15 years* which reflects adversely on his character. * * * *Not a single witness testified* that he was not a man of good character. * * * To hold, as the Court did, that Communist affiliation *for 6 to 7 years up to 1940, 15 years prior to the assessment of it, in and of itself made petitioner a 'person of questionable character' is so dogmatic an inference as to be wholly unwarranted.*" (Italics supplied by petitioner.)

NOTE: If petitioner did in fact (which he did not) commit the allegations about the Weinberger-Galston matter mentioned in Respondent's "Brief in Opposition" (p. 2, par. 4), it must be remembered that this

alleged matter occurred *30 years ago*, and also, upon petitioner's aforesaid reinstatement applications, *Respondent did not produce a single witness to testify that petitioner was not a man of good character.* On the contrary, Respondent's very own Counsel in 1961, referring to petitioner's character since 1936, stated that it was *"a glowing tribute to the high type of character petitioner posessses."* (See p. 5, lines 33-34, Petition for Writ of Certiorari herein.)

Further still, the disbarment Order of January, 1936 void for lack of procedural due process, could not be validated by any other merits or matter (i.e., said Weinberger-Galston matter) which might justify denial of petitioner's license. The New York Court of Appeals and this honorable Court have so held, viz.:

> In *Matter of Donegan*, 282 N. Y. 285: "* * * *We are not concerned with the merits.* The question presented is solely whether the term 'felony' as employed in the sections of the Judiciary Law, etc."
>
> In *Willner* v. *Committee etc.*, 373 U. S. 96: "* * * We *are not concerned with the grounds which justify denial of a license to practice law,* but only with what procedural due process requires if a license is to be withheld."

In view of all the foregoing, it is earnestly hoped that this honorable Court will find it humanely possible and within its good grace and conscience, to grant the Petition prayed for herein and afford me the opportunity to orally present the case before the Court.

Dated: April 11, 1966.

Respectfully submitted,

Louis Fried,
Petitioner, pro se,
280 Prospect Avenue,
Hackensack, New Jersey.

Certificate.

I, LOUIS FRIED, petitioner pro se herein, pursuant to Rule 58(2) of this Court's Rules, hereby certify as follows:

As appears below, I present this petition for rehearing in good faith and not for any delay purpose.

During 30 years since the January, 1936 void Order for my disbarment, I have labored continuously and faithfully to clear my name, the last step in exoneration being the certiorari petition herein.

Based on confessions of perjury upon which I was convicted in 1935 1) I received a full and unconditional presidential pardon; 2) after a hearing before the U. S. Civil Service Commission upon said wrongful conviction, I was reinstated in the U. S. Civil Service as a legal claims adjudicator in 1941, serving as such until 1959, when I retired with honor; 3) after a hearing in 1961 upon my own bar reinstatement application, Counsel for the very Respondent herein, then stated to the Court (p. 5, commencing line 19, Petition for Writ of Certiorari herein):

> "* * * It would seem from the retractions and from the presidential pardon, coupled with the thorough investigation incidental to any pardon, that this petitioner was convicted on perjured testimony and never did commit the crime for which he was ultimately disbarred. * * * the excellent character testimony * * * by individuals of the highest quality serve as a glowing tribute to the high type of character the petitioner possesses. * * * Some of the character witnesses * * * bespoke Fried's goodness with emotion which cannot be gleaned from the printed word."

While the lower courts have refused to recognize the invalidity of the disbarment Order of January, 1936, on the jurisdictional and Constitutional grounds set forth in my certiorari petition herein, or reinstate me, my faith has

never wavered that the United States Supreme Court would sustain me. I therefore still have confidence that, upon a review of the legal and factual aspects of my case, especially in view of the recent cases of *Willner* v. *Committee on Character and Fitness,* 373 U. S. 96 and *Schware* v. *Board of Bar Examiners,* 353 U. S. 232, I will be sustained.

My wife and I were married 41 years ago. We have lived in harmony all our lives and raised two fine children, both college graduates and both now married. To make possible the presentation of my case over the years, we have stinted for many years to pay for counsel fees, printing, etc. in the case. Our main source of income since I retired in 1959, is my federal government pension of less than $4,000 per annum. For this reason, in recent years it has been necessary to present my case "pro se".

I am now past the traditional age of 3 score and 10. I seek no sympathetic consideration but only a just decision on the legal and equitable merits of the case.

Dated: April 11, 1966.

Louis Fried

(LOUIS FRIED)